

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1626 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

LADHARAM DEVKARAN SETHIA

Versus

LEGAL REPRESENTATIVES OF DECEASED KARSAN
DHANJI PATEL.

Appearance:

None present for the petitioner.
MR AR THAKKAR for the petitioner

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/06/2000

C.A.V.JUDGEMENT

1. The matter is called out for hearing in the first round in the first sitting and in the second round in the second sitting, but none put appearance for the

petitioner and though this matter could have been dismissed for non-prosecution but on 3rd March,2000 the arguments were heard partly in this case and the matter was adjourned on the request made by the learned counsel for the petitioner as he was to take instructions from his client.

2. The facts of this case in brief are that the petitioner-defendant no.2 in the suit out of which this civil revision application has arisen, advanced loan of Rs. 17,000-00 to the grand father of respondent nos. 1/1 and 1/2. the grant father of the respondent nos. 1/1/ and 1/2 executed pro-note for Rs. 17,000/- on 29th January, 1979. Interest on this amount was agreed to be paid at the rate of 19% per annum. The petitioner-defendant no.2 filed Special Civil Suit No. 106 of 1981 for recovery of this loan amount with interest in the Court of Civil Judge (S.D.) Bhuj. That suit was came to be decreed on 4.9.1986. In execution of the decree the property in dispute was put to auction and the same has been purchased with the permission of the Court by the petitioner himself. The learned counsel for the respondents has given out that the property has been purchased by the petitioner in auction. The cost for which it was purchased by the petitioner was less than the amount of the decree as on that day. The possession of the suit land is with the respondents on which fact there is no dispute. During the course of the arguments on suggestion of the Court the respondents have agreed to pay loan amount i.e. principle amount of Rs. 17,000/and interest at the rate of 19% per annum thereon from the date of execution of pro-note i.e. 19th January,1979 till day. They further agreed to pay cost of the suit and other expenses of sale certificate etc. The learned counsel for the respondents has brought a draft for Rs. 91,000/-. The break ups of this amount are as under :

1. Principle amount as per
Pron-Note dtd. 29/1/79 Rs. 17,000-00
2. Interest for the period
from 29/1/79 to 3/3/2000
at the rate of 19% p.a. Rs. 68,123-00
3. Cost of litigation and
other expenses. Rs. 5,852-00

Total Rs. 90,975-00
=====

(Round figure 91,000-00)

After 3rd March, 2000 the matter was adjourned from time to time, so that the learned counsel for the petitioner may take instructions from his client. The learned counsel for the petitioner on last date given out that despite of sending letter the petitioner is not responding to him. In normal circumstances the petitioner is to be interested in the money and not in the property. The respondents are very fairly come up and they are ready to pay every penny of the loan amount, interest as well as the costs of litigation. To show their bonafide, willingness and acceptance, the respondents have brought a draft of Rs. 91,000/- in favour of the petitioner. It is unfortunate that the petitioner is not responding to the letter of his counsel. In case the petitioner does not accept this amount i.e. full amount of his claim, it is unfortunate for the respondents as well as for the litigants who are waiting for decision in their matters pending for years. I find it to be a most appropriate case to be dealt with in the Lok Adalat. The petitioner could not get more than what the respondents are willing to give to him. The property is of the respondents and they are willing to discharge their pious obligation. In these facts there may not be any difficulty to permit them to retain the property on payment of the full amount of loan with the interest and the cost of litigation. The order passed by the learned Trial Court is only an interlocutory order and prima facie I do not find any perversity therein. Otherwise also the suit out of which the revision application arises is of the year 1988 and at this stage it is rather in the interest of both the parties and rightly the Court has proceeded to decide all the issues together. Issue of the nature which is prayed to be decided as a preliminary issue by the petitioner possibly such a prayer could have been accepted at initial stage of the suit, but not at the stage. Where the suit is very old itself, it is in the interest of all that is to be decided finally within a time bound programme. In case the petitioner would have remained present in the court there would have been all possibility of deciding of the suit itself finally by the settlement in these very proceedings but unfortunately the petitioner has not thought it fit to remain present despite of the desire of his counsel in the Court.

4. In the result, this Civil Revision Application fails and same is dismissed. The learned Trial Court is directed to send this matter to the Lok Adalat. If this matter is not settled in the Lok Adalat learned Trial Court to decide it within three months from the date on

which the file is received by it from the Lok Adalat.
Rule discharged. No order as to costs.

(S.K.Keshote,J)

(vipul)